

## Federal Reserve System

## § 239.10

(ii) The default of the parent mutual holding company or its subsidiary holding company; or

(iii) Foreclosure on any pledge by the mutual holding company of subsidiary savings association stock or subsidiary holding company stock.

(2) Except as provided in paragraph (b)(3) of this section, the net proceeds of any liquidation of any mutual holding company shall be transferred to the members of the mutual holding company and, if applicable, the stock holders of the subsidiary holding company in accordance with the charter of the mutual holding company and, if applicable, the charter of the subsidiary holding company.

(3) If the FDIC incurs a loss as a result of the default of any subsidiary savings association of a mutual holding company and that mutual holding company is liquidated pursuant to paragraph (b)(1) of this section, the FDIC shall succeed to the membership interests of the depositors of such savings association in the mutual holding company to the extent of the FDIC's loss.

(c) *Voluntary liquidation.* The provisions of § 239.16 shall apply to mutual holding companies.

### § 239.10 Procedural requirements.

(a) *Proxies and proxy statements*—(1) *Solicitation of proxies.* The provisions of §§ 239.56 and 239.57(a) through (d) and (f) through (h) shall apply to all solicitations of proxies by any person in connection with any membership vote required by this part. Proxy materials must be in the form specified by the Board and contain the information specified in §§ 239.57(b) and 239.57(d), to the extent such information is relevant to the action that members are being asked to approve, with such additions, deletions, and other modifications as are required under this part, or as are necessary or appropriate under the disclosure standard set forth in § 239.57(f). File proxies and proxy statements in accordance with § 239.55(c) and address them to the appropriate Reserve Bank. For purposes of this paragraph, the term *conversion*, as it appears in the provisions of part subpart E of this part, refers to *the reorganization, the stock issuance, or other corporate action*, as appropriate.

(2) *Additional proxy disclosure requirements.* In addition to the requirements in paragraph (a) of this section, all proxies requesting acountholder approval of a mutual holding company reorganization shall address in detail:

(i) The reasons for the reorganization, including the relative advantages and disadvantages of undertaking the transaction proposed instead of a standard conversion;

(ii) Whether management believes the reorganization is in the best interests of the association and its acountholders and the basis of that belief;

(iii) The fiduciary duties owed to acountholders by the association's officers and directors and why the reorganization is in accord with those duties and is otherwise equitable to the acountholders and the association;

(iv) Any compensation agreements that will be entered into by management in connection with the reorganization; and

(v) Whether the mutual holding company intends to waive dividends, the implications to acountholders, and the reasons such waivers are consistent with the fiduciary duties of the directors of the mutual holding company.

(3) *Nonconforming minority stock issuances.* Subsidiary holding companies proposing non-conforming minority stock issuances pursuant to § 239.24(c)(6)(ii) must include in the proxy materials to acountholders seeking approval of a proposed reorganization an additional disclosure statement that serves as a cover sheet that clearly addresses:

(i) The consequences to acountholders of voting to approve a reorganization in which their subscription rights are prioritized differently and potentially eliminated; and

(ii) Any intent by the mutual holding company to waive dividends, and the implications to acountholders.

(4) *Use of "running" proxies.* Unless otherwise prohibited, a mutual holding company may make use of any proxy conferring general authority to vote on any and all matters at any meeting of members, provided that the member granting such proxy has been furnished a proxy statement regarding the matters and the member does not grant a

later-dated proxy to vote at the meeting at which the matter will be considered or attend such meeting and vote in person, and further provided that “running” proxies or similar proxies may not be used to vote for a mutual holding company reorganization, mutual-to-stock conversion undertaken by a mutual holding company, dividend waiver, or any other material transaction. Subject to the limitations set forth in this paragraph, any proxy conferring on the board of directors or officers of a mutual savings association general authority to cast a member’s votes on any and all matters presented to the members shall be deemed to cover the member’s votes as a member of the mutual holding company and such authority shall be conferred on the board of directors or officers of a mutual holding company.

(b) *Applications under this part.* Except as provided in paragraph (c) of this section, any application, notice or certification required to be filed with the Board under this part must be filed in accordance with § 238.14 of this chapter. The Board will review any filing made under this part in accordance with § 238.14 of this chapter.

(c) *Reorganization Notices and stock issuance applications*—(1) *Contents.* Each Reorganization Notice submitted to the appropriate Reserve Bank pursuant to § 239.3(a) and each application for approval of the issuance of stock submitted to the appropriate Reserve Bank pursuant to § 239.24(a) shall be in the form and contain the information specified by the Board.

(2) *Filing instructions.* Any Reorganization Notice submitted under § 239.3(a) must be filed in accordance with § 238.14 of this chapter. Any stock issuance application submitted pursuant to § 239.24(a) shall be filed in accordance with § 239.55.

(3) *Public notice, public comment, and meetings.* Mutual holding company reorganizations are subject to applicable public notice, public comment, and meeting requirements under the Bank Merger Act regulations at § 238.11(e) of this chapter and the Savings and Loan Holding Company Act regulations at § 238.14 of this chapter.

(d) *Amendments.* Any mutual holding company may amend any notice or ap-

plication submitted pursuant to this part or file additional information with respect thereto upon request of the Board or upon the mutual holding company’s own initiative.

(e) *Time-frames.* All Reorganization Notices and applications filed pursuant to this part must be processed in accordance with the processing procedures at § 238.14 of this chapter. Any related approvals requested in connection with Reorganization Notices or applications for approval of stock issuances (including, without limitation, requests for approval to transfer assets to resulting associations, to acquire acquiree associations, and to organize resulting associations or interim associations, and requests for approval of charters, bylaws, and stock forms) shall be processed pursuant to the procedures specified in this section in conjunction with the Reorganization Notice or stock issuance application to which they pertain, rather than pursuant to any inconsistent procedures specified elsewhere in this chapter. The approval standards for all such related applications, however, shall remain unchanged. The review by the Board of any materials used in connection with the issuance of stock under § 239.24 must not be subject to the applications processing time-frames set forth in §§ 238.14(f) and (g) of this chapter.

(f) *Disclosure.* The rules governing disclosure of any notice or application submitted pursuant to this part, or any public comment submitted pursuant to paragraph (c) of this section, shall be the same as set forth in § 238.14(b) of this chapter for notices, applications, and public comments filed under § 238.14 of this chapter.

(g) *Appeals.* Any party aggrieved by a final action by the Board which approves or disapproves any application or notice pursuant to this part may obtain review of such action in accordance with 12 U.S.C. 1467a(j).

(h) *Federal preemption.* This part preempts state law with regard to the creation and regulation of mutual holding companies.

#### § 239.11 Subsidiary holding companies.

(a) *Subsidiary holding companies.* A mutual holding company may establish